

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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KEISHMA SMALLWOOD ETC., by and through  
the guardian of her person, Editha  
Hills, et ano,

Plaintiffs, ORDER

- against -

CV 2004-0686 (JFB) (MDG)

MATTHEW M. LUPOLI, et al.,

Defendant.

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By letter dated February 13, 2007, Edward G. Bailey, counsel for plaintiffs, seeks an extension of time to serve expert disclosures and reports. See ct. doc. 13. Mr. Bailey advises that Joseph DiBlasi, counsel for defendant George Brucker, the only defendant to retain an expert consents. Id. However, Peter Redmond, defendant pro se and counsel Peter Redmond P.C. objects, arguing that plaintiffs have been remiss in meeting discovery deadlines and seek only to delay submission of defendants' summary judgment motion. See ct. doc. 67.

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DISCUSSION

In determining whether an extension of expert discovery is warranted, courts consider the factors set forth in Softel, Inc. v. Dragon Med. & Scientific Comm., Inc., 118 F.3d 955 (2d Cir. 1997). These factors are: (1) the party's explanation for the failure to comply with the discovery order; (2) the importance of the testimony of the precluded witness; (3) the prejudice suffered by the opposing party; and (4) the possibility of a

continuance. Id., 118 F.3d 955, 961; see also Wolak v. Spucci, 217 F.3d 157 (2d Cir. 2000).

The first factor weighs against extension, since plaintiffs merely claim that their expert needs additional time despite a prior extension. This Court originally set a deadline for expert reports of January 15, 2007 and granted plaintiffs' belated request for an extension to January 31, 2007, which was made after the deadline had passed. Plaintiffs again seek an extension after expiration the second deadline set.

However, the other factors weigh in favor of an extension. Expert testimony may be important to the defendants to counter defendants' expert, since, as Mr. Redmond notes, Judge Dearie previously urged plaintiffs' counsel to get an expert. Defendants' motions for summary judgment are scheduled to be argued in June. Thus, an extension would neither prejudice defendants nor delay trial which has not even been set.

#### CONCLUSION

If plaintiffs have not yet served their expert report and disclosures, the time to do so is extended an additional two weeks to May 14, 2007 and any rebuttal expert reports and disclosures must be served by June 14, 2007.

**SO ORDERED.**

Dated: Brooklyn, New York  
April 30, 2007

/s/\_\_\_\_\_  
MARILYN D. GO  
UNITED STATES MAGISTRATE JUDGE